

SENATE CS FOR HOUSE BILL NO. 227(L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 5/11/22

Referred: Rules

Sponsor(s): REPRESENTATIVES SCHRAGE, Claman, Fields, Spohnholz, Tarr, Snyder, Josephson, Wool, Story

SENATORS Hughes, Kiehl, Kawasaki, Micciche

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to municipal energy and resilience improvement assessment programs;**
2 **relating to the planning commission membership apportionment requirement for first**
3 **and second class boroughs; and providing for an effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 *** Section 1.** AS 29.10.200(64) is amended to read:

6 (64) AS 29.55.100 - 29.55.165 (energy **and resilience** improvement
7 assessment programs);

8 *** Sec. 2.** AS 29.35.200(b) is amended to read:

9 (b) A first class borough may by ordinance exercise the following powers on
10 an areawide basis:

- 11 (1) provide transportation systems;
12 (2) provide water pollution control;
13 (3) provide air pollution control in accordance with AS 46.14.400;
14 (4) license day care facilities;

1 (5) license, impound, and dispose of animals;

2 (6) establish an energy **and resilience** improvement assessment
3 program under AS 29.55.100 - 29.55.165.

4 * **Sec. 3.** AS 29.35.210(a) is amended to read:

5 (a) A second class borough may by ordinance exercise the following powers
6 on a nonareawide basis:

7 (1) provide transportation systems;

8 (2) regulate the offering for sale, exposure for sale, sale, use, or
9 explosion of fireworks;

10 (3) license, impound, and dispose of animals;

11 (4) subject to AS 29.35.050, provide garbage, solid waste, and septic
12 waste collection and disposal;

13 (5) provide air pollution control under AS 46.14.400;

14 (6) provide water pollution control;

15 (7) participate in federal or state loan programs for housing
16 rehabilitation and improvement for energy conservation;

17 (8) provide for economic development;

18 (9) provide for the acquisition and construction of local service roads
19 and trails under AS 19.30.111 - 19.30.251;

20 (10) establish an emergency services communications center under
21 AS 29.35.130;

22 (11) subject to AS 28.01.010, regulate the licensing and operation of
23 motor vehicles and operators;

24 (12) engage in activities authorized under AS 29.47.460;

25 (13) contain, clean up, or prevent a release or threatened release of oil
26 or a hazardous substance, and exercise a power granted to a municipality under
27 AS 46.04, AS 46.08, or AS 46.09; the borough shall exercise its authority under this
28 paragraph in a manner that is consistent with a regional master plan prepared by the
29 Department of Environmental Conservation under AS 46.04.210;

30 (14) establish an energy **and resilience** improvement assessment
31 program under AS 29.55.100 - 29.55.165.

1 * **Sec. 4.** AS 29.35.210(b) is amended to read:

2 (b) A second class borough may by ordinance exercise the following powers
3 on an areawide basis:

- 4 (1) provide transportation systems;
5 (2) license, impound, and dispose of animals;
6 (3) provide air pollution control under AS 46.14.400;
7 (4) provide water pollution control;
8 (5) license day care facilities;
9 (6) establish an energy **and resilience** improvement assessment
10 program under AS 29.55.100 - 29.55.165.

11 * **Sec. 5.** AS 29.40.020(a) is amended to read:

12 (a) Each first and second class borough shall establish a planning commission
13 consisting of five residents unless a greater number is required by ordinance.
14 [COMMISSION MEMBERSHIP SHALL BE APPORTIONED SO THAT THE
15 NUMBER OF MEMBERS FROM HOME RULE AND FIRST CLASS CITIES
16 REFLECTS THE PROPORTION OF BOROUGH POPULATION RESIDING IN
17 HOME RULE AND FIRST CLASS CITIES LOCATED IN THE BOROUGH.] A
18 member shall be appointed by the borough mayor for a term of three years subject to
19 confirmation by the assembly, except that a member from a home rule or first class
20 city shall be selected from a list of recommendations submitted by the council.
21 Members first appointed shall draw lots for one, two, and three year terms.
22 Appointments to fill vacancies are for the unexpired term. The compensation and
23 expenses of the planning commission and its staff are paid as directed by the
24 assembly.

25 * **Sec. 6.** AS 29.55.100(a) is amended to read:

26 (a) A municipality may establish an energy **and resilience** improvement
27 assessment program under AS 29.55.100 - 29.55.165 to finance the **construction,**
28 **installation,** or modification of permanent improvements that are [(1)] fixed to **new**
29 **construction or** existing privately owned commercial or industrial property [;] and
30 **that**

31 **(1) are energy improvement projects designed** [(2) INTENDED] to

1 reduce energy consumption or demand, energy costs, or emissions affecting local air
 2 quality, including a product, device, or interacting group of products or devices that
 3 use energy technology to generate electricity, provide thermal energy, or regulate
 4 temperature; or

5 (2) improve building resilience; resilience improvement projects
 6 include projects for seismic improvements, stormwater management, flood
 7 mitigation and protection, fire hardening, fire or wind resistance, erosion
 8 management, snow load management, microgrids for energy storage and backup
 9 power generation, water or wastewater efficiency including reuse and energy
 10 recovery, electric vehicle charging stations, retrofitting that improves the
 11 envelope, structure, or systems of the building, and any other improvement
 12 project approved by a municipality as a resilience improvement project.

13 * Sec. 7. AS 29.55.100(b) is amended to read:

14 (b) To establish a program under AS 29.55.100 - 29.55.165, the governing
 15 body of a municipality shall take the following actions in the following order:

16 (1) adopt a resolution of intent that includes

17 (A) a finding that financing energy and resilience
 18 improvement projects through assessments serves a valid public purpose;

19 (B) a statement that the municipality intends to allow privately
 20 owned commercial or industrial property owners to make assessments to repay
 21 financing for energy and resilience improvement projects;

22 (C) a description of energy and resilience improvement
 23 projects that may be subject to assessments;

24 (D) a description of the boundaries of a region within the
 25 municipality's boundaries in which the program is available;

26 (E) a description of any proposed arrangements to make third-
 27 party financing available or any financing the municipality will provide for
 28 energy and resilience improvement projects; and

29 (F) a description of municipal debt servicing procedures for
 30 any third-party financing and assessments;

31 (2) prepare the report required under AS 29.55.110 and provide notice

1 of the report with the

2 (A) location where the report is available for public inspection;

3 (B) time and place for a public hearing on the proposed
4 program; and

5 (C) name of the local official who administers the program and
6 the appropriate assessor or person who collects the proposed assessments with
7 property taxes imposed on the assessed property;

8 (3) hold a public hearing at which the public may comment on the
9 proposed program and the report prepared under AS 29.55.110; and

10 (4) adopt an ordinance establishing the program and the terms of the
11 program, including each item included in the report required under AS 29.55.110,
12 which may be incorporated by reference.

13 * **Sec. 8.** AS 29.55.100(d) is amended to read:

14 (d) A municipality may impose fees to offset the costs of administering a
15 program. The fees authorized under this subsection may be **imposed** [ASSESSED] as
16 a

17 (1) program application fee paid by the property owner applying to the
18 program;

19 (2) **servicing fee included in** [COMPONENT OF THE INTEREST
20 RATE ON] the assessment in the written contract between the municipality and the
21 property owner; or

22 (3) combination of (1) and (2) of this subsection.

23 * **Sec. 9.** AS 29.55.105(a) is amended to read:

24 (a) A municipality that establishes a program under AS 29.55.100 may

25 (1) enter into a written contract with a record owner of privately owned
26 commercial or industrial property in a region designated under AS 29.55.100 to
27 impose an assessment to repay the financing of an energy **or resilience** improvement
28 project on that property;

29 (2) contract with the governing body of another taxing unit to perform
30 the duties of the municipality relating to collection of assessments imposed by the
31 municipality under this section.

1 * **Sec. 10.** AS 29.55.105(c) is amended to read:

2 (c) An assessment under this section may repay financing for costs of an
3 energy **or resilience** improvement project, including

4 (1) the cost of materials and labor necessary for the energy **or**
5 **resilience** improvement project;

6 (2) permit fees;

7 (3) inspection fees;

8 (4) lender's fees;

9 (5) program application and administrative fees;

10 (6) energy **or resilience** improvement project development and
11 engineering fees;

12 (7) third-party review fees, including verification review fees, under
13 AS 29.55.120; [AND]

14 (8) **capitalized interest;**

15 **(9) interest reserves;**

16 **(10) escrow for prepaid property tax or insurance;**

17 **(11) capitalized extended manufacturer's warranty or**
18 **maintenance agreement costs during the period of assessment; and**

19 **(12)** any other fees or costs that may be incurred by the property owner
20 incident to the installation, modification, or improvement on a specific or pro rata
21 basis, as determined by the municipality.

22 * **Sec. 11.** AS 29.55.105(f) is amended to read:

23 (f) A municipality may not impose a period of assessment under this section
24 on privately owned commercial or industrial property that exceeds **30** [20] years or the
25 useful life of the project that is the basis for the assessment [, WHICHEVER IS
26 SHORTER].

27 * **Sec. 12.** AS 29.55.105(g) is amended to read:

28 (g) **The** [EXCEPT AS OTHERWISE PROVIDED IN (h) OF THIS
29 SECTION, THE] total financing **for costs of an energy or resilience improvement**
30 **project** [REPAID BY ASSESSMENTS

31 (1)] may not exceed **25** [20] percent of the **market** [ASSESSED] value

of the property at the time of program application **or completion of the proposed energy or resilience improvement project** [;

(2) MUST BE EXCEEDED BY THE PROJECTED MONETARY SAVINGS TO THE PROPERTY OWNER OVER THE LIFE OF THE ASSESSMENT AS A RESULT OF THE ENERGY IMPROVEMENT PROJECT].

* **Sec. 13.** AS 29.55.105 is amended by adding a new subsection to read:

(i) An assessment under this section may repay financing for costs of a proposed energy or resilience improvement project or an energy or resilience improvement project completed within the past two years.

* **Sec. 14.** AS 29.55.110(a) is amended to read:

(a) The municipality shall prepare a report for a proposed program required by AS 29.55.100 that includes

(1) a map showing the boundaries of each proposed region within which the program is available;

(2) a form for a contract between the municipality and a property owner specifying the terms of

(A) assessment under the program; and

(B) financing provided by a third party or the municipality, as appropriate;

(3) if the proposed program provides for third-party financing, a form for a contract between the municipality and the third party regarding the servicing of the debt through assessments;

(4) a description of **energy and resilience improvement** projects that may qualify for assessments;

(5) a plan for ensuring sufficient capital for third-party financing and, if appropriate, raising capital for municipal financing for energy **and resilience** improvement projects;

(6) if bonds will be issued to provide capital to finance energy **and resilience** improvement projects as part of the program as provided by AS 29.55.140,

(A) a maximum aggregate annual dollar amount for municipal financing repaid by assessments under the program;

1 (B) if requests appear likely to exceed the authorization
2 amount, a priority order for ranking a property owner's application for
3 financing repaid by assessments; and
4 (C) a formula for calculating
5 (i) the interest rate and period during which contracting
6 owners would pay an assessment; and
7 (ii) the maximum amount of an assessment;
8 (7) a method to calculate a period of assessment consistent with
9 AS 29.55.105(f);
10 (8) a description of the application process and eligibility requirements
11 for financing repaid by assessments under the program;
12 (9) a method for a property owner applying to participate in the
13 program to demonstrate the property owner's ability to fulfill financial obligations and
14 pay assessments; the method must be based on appropriate underwriting factors,
15 including
16 (A) verification that the property owner
17 (i) is the legal owner of the benefited property;
18 (ii) is current on mortgage and property tax payments;
19 and
20 (iii) is not insolvent or in bankruptcy proceedings; and
21 (B) an appropriate ratio between the amount of the assessment
22 and the **market** [ASSESSED] value of the property;
23 (10) an explanation of the manner in which the municipality shall
24 assess the property and collect assessments;
25 (11) the lender notice requirement under AS 29.55.115;
26 (12) the review requirement under AS 29.55.120;
27 (13) a description of marketing and participant education services
28 provided by the municipality for the program;
29 (14) a description of quality assurance and antifraud measures
30 instituted by the municipality for the program and the consequence or penalty
31 prescribed by the municipality for a property owner who participates in the program

1 but does not complete an energy or resilience improvement project as proposed; and

2 (15) a description of the insurance requirements, including a
3 requirement that the property owner have insurance against damage to the energy or
4 resilience improvement project for the life of the assessment.

5 * **Sec. 15.** AS 29.55.115 is amended to read:

6 **Sec. 29.55.115. Notice to mortgage holder required for participation.**

7 Before a municipality may enter into a written contract with a record owner of
8 property to impose an assessment to repay the financing of an energy or resilience
9 improvement project under AS 29.55.100, the property owner shall

10 (1) give each holder of a mortgage lien on the property at least 30
11 days' [DAYS"] written notice of the intention of the property owner to participate in a
12 program under AS 29.55.100; and

13 (2) obtain [A] written consent from each holder of a mortgage lien on
14 the property.

15 * **Sec. 16.** AS 29.55.120 is amended to read:

16 **Sec. 29.55.120. Review required.** The record owner of property on which an
17 assessment is imposed under AS 29.55.105 shall obtain [FROM AN INDEPENDENT,
18 THIRD-PARTY QUALIFIED ENERGY AUDITOR THE FOLLOWING:]

19 (1) for each proposed energy or resilience improvement project,

20 (A) a review of the energy, [OR] emissions, or resilience
21 baseline conditions, as appropriate; and

22 (B) the projected reduction in energy costs, energy
23 consumption or demand, or emissions affecting local air quality, or increase in
24 resilience, as appropriate; and

25 (2) for each completed energy or resilience improvement project,
26 verification that the energy or resilience improvement project was properly completed
27 and is operating as intended.

28 * **Sec. 17.** AS 29.55.125 is amended to read:

29 **Sec. 29.55.125. Direct acquisition by owner.** The proposed arrangements for
30 financing an energy or resilience improvement project may authorize the property
31 owner to

(1) purchase directly the related equipment and materials for the energy or resilience improvement project; and

(2) contract directly, including through lease, a power purchase agreement, or other service contract, for the energy or resilience improvement project.

* **Sec. 18.** AS 29.55.135(b) is amended to read:

(b) Assessment liens run with the land, and that portion of the assessment under the assessment contract that has not yet become due is not eliminated by foreclosure of a property tax lien or a lien for an assessment.

* **Sec. 19.** AS 29.55.140(a) is amended to read:

(a) A municipality may issue bonds or notes to finance energy and resilience improvement projects subject to assessment under AS 29.55.105.

* **Sec. 20.** AS 29.55.140(d) is amended to read:

(d) Bonds or notes issued under this section must further one or more of the following essential public and governmental purposes:

(1) improvement of the reliability of local electrical systems;

(2) reduction of energy costs;

(3) reduction of energy demand on local utilities;

(4) reduction of emissions affecting local air quality;

(5) economic stimulation and development;

(6) enhancement of property values;

(7) enhancement of employment opportunities;

(8) improvement of building resilience.

* **Sec. 21.** AS 29.55.150 is amended to read:

Sec. 29.55.150. Prohibited acts. A municipality that establishes a region under AS 29.55.100 may not make the issuance of a permit, license, or other authorization from the municipality to a person who owns property in the region contingent on the person entering into a written contract to repay the financing of an energy or resilience improvement project through assessments under AS 29.55.105, or otherwise compel a person who owns property in the region to enter into a written contract to repay the financing of an energy or resilience improvement project through assessments under AS 29.55.105.

1 * **Sec. 22.** AS 29.55.160 is amended by adding a new paragraph to read:

2 (3) "finance" and "financing" include refinancing an existing project.

3 * **Sec. 23.** AS 29.55.165 is amended to read:

4 **Sec. 29.55.165. Short title.** AS 29.55.100 - 29.55.165 may be cited as the

5 Municipal Property Assessed Clean Energy **and Resilience** Act.

6 * **Sec. 24.** AS 29.55.105(d)(1) and 29.55.105(h) are repealed.

7 * **Sec. 25.** This Act takes effect immediately under AS 01.10.070(c).